IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.943 OF 1988

New India Mosaic & Marble
Company Pvt. Ltd. .. Plaintiff.

Versus

Simplex Enterprises & Ors. .. Defendants.

Ms.Nadia Bhatia i/b.P.Gidwani for the plaintiffs.
None for the defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 4TH JULY, 2007.

P.C.:

1. The plaintiff seeks decree against the defendants on the basis that the writ of summons was duly served but despite receipt of copy of the plaint and the annexures, the defendants have not come forward to file their defence. Each of them has duly received the writ of summons, the plaint and the annexures alongwith the summons. They were aware of the time that was stipulated for filing written statement. There is neither any

written statement filed nor there is any appearance entered on their behalf.

2. The plaintiff, therefore, prays for decree in terms of Order VIII Rule 5(2) of the Code of Civil Procedure r/w. Rule 10 thereof.

3. The plaintiffs have averred that as per the contract which has been arrived at between the parties on 25th May, 1991, the first defendant agreed and undertook to manufacture the product mentioned therein and supply the same to the plaintiff on the terms and conditions of a written contract. The terms, which are relevant are reproduced in the plaint and a copy of the Contract has been duly annexed.

4. In the affidavit in lieu of examination-in-chief, the plaintiff’s witness has pointed out the that contract is admitted and even the articles / product was supplied but the first defendant sought for increase in the rates. There was correspondence between the parties. There is an admission of the liability to the extent of Rs.17,644/- and the balance was disputed by the defendants on the ground that the raw material which was supplied was of inferior quality. The plaintiff’s affidavit in lieu of

examination-in-chief reiterates the averments in the plaint and additionally states that the contents of the Contract and other documents are admitted as all of them are executed and addressed the ordinary and usual course of business between the parties. This is a commercial contract. The receipt and contents of the letters addressed by the plaintiffs are proved. As far as the letter at page 16 of the affidavit, it is clear that the liability to the extent of Rs.17,644/- is admitted.

5. The letter dated 1st September, 1987 addressed by the defendants to the plaintiff reads thus :-

> "New India Mosaic & Marble Co. Pvt.Ltd.
> Sylvester Bldg., 1st Floor,
> 20, Shahid Bhagat Singh Road,
> Bombay 400023.
>
> Dear Sirs,
>
> Ref. Your Regd.Letter No.87/SIMPLEX/272
> dt.24/8/87.
>
> We have noted the contents of your above letter and have to state that the manufacturing of your Tiles, the preparation of Cement-mix using sub-standard proportions, and the deliveries of Tiles was all under the strict supervision of your own representative at all the times.
>
> You had been informed time & again by our Partner & the Factory Manager about the low mixing used by you and the resultant breakages. Our earlier letters have answered all your accusations which we have proved to you as totally false & baseless.
>
> We have also to point out to you, that in every letter of yours, you come up with new & false

> figures of something or the other, which in itself is a big joke.
>
> On going through our accounts, we find that the net amount payable to you by us (after considering your Security Deposit) comes to Rupees Seventeen thousand six hundred forty four only (Rs.17,644/00) and which we are willing to pay to you by Cheque as full & final settlement of all outstandings between us. Kindly confirm the same. If you do not accept the above quoted figure, you may take recourse to legal proceedings if you so wish, when we shall prove our records right,. at your cost & consequences.
>
> Yours faithfully,
> For SIMPLEX ENTERPRISES,
> Sd/-
> E X E C U T I V E"

6. The contents of the said letter are also reiterated on 13th November, 1987 in writing by the first defendant, which is a reply to the Advocate’s notice. The plaintiffs are not accepting the aforesaid sum in full and final settlement. Instead, they have filed this suit. The averments in the plaint are not denied. The defendants have neither disputed their liability nor is there anything to indicate that the defendants have proved their case.

7. The contents of the documents being proved, they are all marked in evidence as Exhibit-A collectively. The affidavit in lieu of examination-in-chief is also taken on record. There is no defence to the claim nor is anybody present on behalf of the defendant to cross examine the

plaintiff’s witness. The defendants are absent despite writ of summons being served nor they have filed any points of defence.

8. In the above circumstances, the plaintiff is entitled to a decree as prayed. There shall be a decree against the defendants and in favour of the plaintiff as prayed. Advocate’s costs to be computed as per the Rules. Certified copy of the decree is expedited.

(S.C.Dharmadhikari, J.)